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Case No. 2:08-CV-01155-PMP-PAL

## ORDER

Defendants.

AND ALL RELATED CLAIMS

Currently before the Court are Defendant William T. Walters' and Golf Club of Nevada, Inc.'s Motion for Summary Judgment (Docs. #449/455); Defendants Michael E. Luce, Joe R. Munsch, Fairway Signature Properties, LLC, Evergreen Alliance Golf Limited, L.P., and Stallion Mountain LeaseCo, LLC's Motion for Summary Judgment (Doc. #447); Defendants Clay Womack, TIC Capital Markets, Inc., and Direct Capital Securities, Inc.'s Motion for Summary Judgment (Doc. #453); and Defendant Alliance Golf Limited, LP, and Stallion Mountain LeaseCo, LLC's Motion for Summary Judgment on Plaintiffs' Claim for Breach of Fiduciary Duty (Doc. #452).

1 Having considered the voluminous briefing of the Parties, and the arguments  
2 presented at the hearing of August 11, 2011, the Court finds that there remain genuine  
3 issues of material fact and witness credibility issues which warrant denial of the foregoing  
4 Motions for Summary Judgment as to most of the claims remaining before the Court, and  
5 now set for trial scheduled to commence December 5, 2011.


6 Specifically, the recent decision of the United States Supreme Court in Janus  
7 Capital Group, Inc. v. First Derivative Traders, 131 Supreme Court 2296 (2011) supports  
8 summary judgment in favor Defendants Clay Womack, TIC Capital Markets, Inc. and  
9 Direct Capital Securities, Inc. as to Plaintiffs' First and Second Claims for Relief for  
10 Federal Securities Fraud. Additionally, the Court finds Plaintiffs have failed to adduce  
11 evidence giving rise to a genuine issue of material fact whether Defendant Evergreen  
12 Alliance Golf Limited, L.P. owed a fiduciary duty to Plaintiffs sufficient to support  
13 Plaintiffs' Eighth Claim for Relief. As to all remaining Claims, however, the Court finds  
14 genuine issues of material fact grounded in part on credibility determinations to be made  
15 by the trier of fact require denial of the Summary Judgment Motions now before the  
16 Court.

17 **IT IS THEREFORE ORDERED** that Defendant Evergreen Alliance Golf  
18 Limited, L.P.'s ("EAGL") Motion for Summary Judgment on Plaintiffs' Eighth Claim for  
19 Breach of Fiduciary Duty (Doc. #478) is **GRANTED** as to that Defendant only.

20 **IT IS FURTHER ORDERED** that the Motion of Defendants Clay Womack, TIC  
21 Capital Markets, Inc. and Direct Capital Securities, Inc. for Summary Judgment (Doc.  
22 #453) is **GRANTED** only as to Plaintiffs' First and Second Claims for Federal Securities  
23 Fraud.

24 **IT IS FURTHER ORDERED** that Defendants' Motions for Summary Judgment  
25 (Docs. #449/455, #447, #453, and #452) are **DENIED** in all other respects.

26 DATED: August 16, 2011.

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PHILIP M. PRO  
United States District Judge